

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Californians for Renewable Energy, Inc.

v.

Docket No. EL06-89-000

California Independent System Operator Corporation

ORDER REJECTING COMPLAINT

(Issued October 19, 2006)

1. In this order, we reject a complaint filed by Californians for Renewable Energy, Inc. (CARE) against the California Independent System Operator Corporation (CAISO). CARE's complaint alleges that the CAISO violated its articles of incorporation by providing testimony in support of a power plant siting application submitted by the City and County of San Francisco (San Francisco) in a proceeding pending before the California Energy Resource Conservation and Development Commission (CEC).

Procedural Matters

2. Notice of CARE's complaint, as amended, was published in the *Federal Register*, 71 Fed. Reg. 43,726 and 54,641 (2006), with interventions, comments, and protests due on or before September 25, 2006. Timely motions to intervene were filed by San Francisco and the California Electricity Oversight Board. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the filing of timely, unopposed motions to intervene serves to make the movants parties to the proceeding. San Francisco also submitted a protest. The CAISO filed an answer to CARE's complaint.

3. CARE filed an answer to the CAISO's answer and San Francisco's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest and an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept CARE's answer to the CAISO's answer and San Francisco's protest.

CARE's Complaint and Responsive Pleadings

4. CARE filed its complaint on July 24, 2006 and amended it on September 5, 2006. CARE's complaint is related to the proceeding pending before the CEC, involving a power plant siting application by San Francisco. CARE's main concern is that San Francisco's power plant has been sited without consideration of its impact on the nearby neighborhoods that have a high concentration of minority residents. CARE contends that by submitting testimony in the CEC proceeding, approving San Francisco's siting application, the CAISO violated the state law, which requires that the CAISO "consult and coordinate with appropriate state and local agencies to ensure that it operates in furtherance of state law regarding consumer and environmental protection."¹ CARE alleges that the CAISO's testimony in the CEC proceeding demonstrates that the CAISO reviewed and approved San Francisco's siting application without first consulting and coordinating with the San Francisco Bay Regional Water Quality Control Board (RWQCB), as required by the state law. Accordingly, CARE requests that the Commission require the CAISO to rescind its approval of San Francisco's siting application.

5. In its answer to CARE's complaint, the CAISO states that CARE is mistaken about the CAISO's role in the CEC siting proceeding. According to the CAISO, its testimony does not address the specific location for San Francisco's power plant; rather the testimony explains that the CAISO has approved San Francisco's proposed interconnection to the transmission grid in accordance with the process established by the CAISO Tariff. The CAISO also argues that the Commission does not have the authority to grant the relief requested by CARE. According to the CAISO, under the Federal Power Act (FPA), the Commission has the authority to regulate the terms of certain jurisdictional services, such as transmission and sales of electricity at wholesale. The CAISO believes that the instant complaint does not address such jurisdictional services.

6. The CAISO also argues that CARE's complaint is defective because it fails to identify any violation of law by the CAISO. The CAISO states that it did not violate the state law requirement to consult and coordinate with appropriate state and local agencies. The CAISO asserts that it satisfied the requirement by filing in the CEC proceeding the testimony about its approval of the proposed interconnection. In addition, the CAISO and San Francisco point out that the CAISO is not required by the state law to obtain site approval from the RWQCB before approving a proposed interconnection.

7. San Francisco also adds that reviewing and approving interconnections to the electric power grid is a routine duty of the CAISO in the context of its general obligations to provide open access to the electric grid. According to San Francisco, the CAISO's

¹ CARE cites to Cal. Pub. Util. Code section 345.5(c)(1).

review of interconnection applications is ministerial in nature, as the CAISO cannot deny a request for interconnection unless interconnection will adversely impact the reliability of the electric grid. San Francisco concludes that that CARE's complaint should be dismissed for the lack of legal basis for the relief sought.

Commission Determination

8. In its complaint, CARE challenges the CAISO's decision to approve interconnection to the transmission grid of the generation project proposed by San Francisco. CARE's main concern appears to be with the location of the proposed generation project and its impact on neighboring communities. CARE believes that the CAISO's determination in regard to interconnection of the proposed facility constitutes the CAISO's support for the choice of the location of the power plant in question.

9. Section 201(b)(1) of the FPA, which addresses the scope of Commission jurisdiction over facilities, provides that:

The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution...²

10. Since section 201 expressly exempts "facilities used for the generation of electric energy" from Commission jurisdiction unless "specifically provided" for, the Commission cannot claim jurisdiction over the generation project proposed by San Francisco. Even if the power plant in question were a jurisdictional facility, the construction and siting of generation are not within the scope of the Commission's authority.³ The issues of the power plant location and possible environmental and social impacts are being addressed in the proceeding before the CEC. The instant proceeding is not the appropriate forum to address these issues.

11. Moreover, we reviewed the testimony submitted by the CAISO in the siting proceeding before the CEC. We find that by granting San Francisco's interconnection request, the CAISO did not violate any of the Commission's orders, rules, or regulations. Violations of the state law alleged by CARE should be addressed in state courts.

² 16 U.S.C § 824b(b)(1) (2004).

³ See, e.g., *Montana Megawatts I, LLC*, 107 FERC ¶ 61,140, at P 6 (2004), *Cleco Power LLC*, 101 FERC ¶ 61,008, at P 117, *order on reh'g*, 103 FERC ¶ 61,272 (2003); *American Municipal Power-Ohio, Inc.*, 58 FERC ¶ 61,182, at 61,566 (1992).

12. For these reasons, we reject CARE's complaint.

Commission orders:

CARE's complaint is hereby rejected for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.